

POLICE/SHERIFF'S DEPARTMENT		RULES AND REGULATIONS	
SUBJECT: Employee Discipline		NUMBER: 1-7	
EFFECTIVE DATE: July 1, 1999		REVIEW DATE:	
AMENDS/SUPERSEDES: RR 1-7, January 1988		APPROVED: _____ Chief of Police/Sheriff	
CALEA STANDARDS: 26.1		VLEPSC STANDARDS: PER.09.01-.09.05	

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

Arrests; reporting
Counseling
Demotion
Discipline
Discipline checklist
Dismissal
Harassment
Penalties

Probationary employees
Punishments
Relief from duty
Reprimands (oral and written)
Sexual harassment
Supervision
Training

I. POLICY

It is the department's policy to impose disciplinary action fairly and impartially and to offer adequate appeal procedures to ensure that the rights of employees are protected.

Discipline is a process of imposing formal sanctions which will help train or develop an employee, preferably through constructive rather than punitive measures. Discipline in the department involves reward of employees, training, counseling, and as a last resort, punishment.

[Note: The procedures outlined in this order generally derive from guidelines that apply to employees of the Commonwealth of Virginia.]

II. PURPOSE

The purpose of this order is to establish procedures concerning informal and formal disciplinary practices within the department.

III. DEFINITIONS

A. Days

The term "days," as used herein, means calendar days provided, however, that if the last day of any time period mentioned herein is a Saturday, Sunday, or holiday, the time period shall be extended to the next day.

B. Relief from duty

An administrative action by a superior whereby a subordinate officer is temporarily relieved from performing his or her duties.

C. Discipline

Training or developing an employee by proper supervision and instruction. Discipline may be positive (awards) or negative (punishment).

IV. PROCEDURES

A. Positive discipline

Positive discipline seeks voluntary compliance with established policies, procedures, orders. Methods of positive discipline include:

1. Recognition of excellent job performance through rewards or awards.
 - a. When people outside the department compliment an employee's performance, the person who receives the information shall make a record of the comments and pass them to the employee's supervisor. When the chief/sheriff receives compliments about an employee, he or she will write a thank-you to the citizen. Copies of the citizen's statement and the chief's response shall be sent to the officer involved, the supervisor and, if the subject is deemed significant, a copy of all correspondence shall be placed in the employee's personnel file.
 - b. Truly exceptional acts shall be clearly and promptly identified to the chief of police/sheriff. These acts may be the basis for special awards or for special recognition by citizen-community groups or media coverage.

2. Discussion and counseling
3. Training

B. Consistency in discipline

The department abides by the philosophy that discipline must be applied consistently and uniformly. RR 1-9 describes complaint procedures against department employees whereas this order discusses employee recognition and penalties for various infractions.

1. The department does not provide employees with lists of specifically prohibited behavior. One list of examples of such behavior appears in RR 1-2, but no list can be all-inclusive. Employees are expected to have a reasonable perception of what constitutes proper behavior, based on academy training and the observance of the behavior of officers generally.

C. Relief from duty

An employee may be relieved from duty whenever a supervisor, whether the chief of police/sheriff, sergeant, or senior officer, questions an employee's physical or psychological fitness for duty. An internal affairs investigation may follow.

1. The sergeant or senior officer has authority to relieve an employee from duty, but must promptly report this action to the chief of police/sheriff, accompanied by a written report setting forth details and circumstances.
2. If the necessity to relieve from duty is not immediate, the behavior or actions of the employee shall be deemed a matter of internal affairs. In an internal affairs investigation, only the chief of police/sheriff may relieve an employee from duty. Only the chief of police, under consultation with the town manager, may suspend without pay an officer whose continued presence on the job constitutes a substantial and immediate threat to the welfare of the department, the public, or to himself (*Virginia Code* § 2.1-116.6).
3. An officer who refuses to obey a direct order in conformance with the department's orders may be relieved from duty by the sergeant or senior officer, who may recommend suspension to the chief of police/sheriff. The chief, in consultation with the town manager, may then suspend without pay (*Virginia Code* § 2.1-116.6).

D. Penalties

The following penalties are available:

1. Oral reprimand; counseling.

2. Written reprimand.
3. Demotion or suspension without pay.
4. Dismissal from department.

E. Oral reprimand; counseling and training

Oral reprimands, while informal, require documentation with an employee's acknowledgment of such record. The following steps shall be observed:

1. At the time of an oral reprimand, the employee receiving it shall be counseled as to correct behavior, and further advised that a written record shall be maintained concerning the reprimand/counseling, and that the employee may read the record.
2. The employee shall be further advised that he or she has the right to file a statement in his or her personnel file setting forth his or her position, in case of disagreement.
3. The reprimanding supervisor shall record the reprimand/counseling in a memorandum to the personnel record containing the following information:
 - a. Employee's name;
 - b. Date of reprimand/counseling;
 - c. Summary of reasons for reprimand/counseling;
 - d. Summary of employee's response;
 - e. Suggestions for improvement or specific actions suggested;
 - f. Name of counselor and signature.
 - g. The following statement must appear:

"I acknowledge that I have today received counseling and I have been advised of the following rights: (1) that a written record of reprimand/counseling shall be maintained; (2) that the employee has a right to review the record and respond in writing; (3) that the form shall become part of the personnel file; and (4) that the employee is required to acknowledge the reprimand/counseling by signing the record."

- h. The employee shall sign and date the form following the statement.
- 4. Oral reprimand/counseling may involve remedial training. This training may be deemed necessary to rectify the improper behavior. Remedial training may include attendance at academy classes, in-service, or other training specially created to help the employee correct or modify his or her behavior. Remedial training is reasonably offered until the employee can demonstrate proficiency in the corrected behavior. All training shall be documented.
- 5. If the employee has not behaved improperly following counseling for one year, the record of counseling shall be expunged from the employee's personnel file. Accumulation of three oral reprimands in one year shall result in a written reprimand or suspension, depending on circumstances.
- 6. Supervisors are expected to counsel employees regularly without oral reprimands. Most counseling is informal, positive, supportive, and perhaps undocumented.
 - a. Supervisors are responsible for counseling employees concerning job-related matters, within their capabilities. Many things can affect the job and an employee's performance, so job-related counseling may involve family and other individual, personal subjects. Counseling may include identification of unacceptable behaviors or actions, specifically what was done wrong and the desired or acceptable performance. Counseling can attempt to determine the reason for the particular behavior, determine and recommend how to correct or improve performance or to solve the problem.
 - b. A variety of counseling resources are available within the community including psychological, family, marital, and financial counseling. Employees in need of counseling, or desiring information about available resources, are encouraged to talk with the chief of police/sheriff. The department recognizes that no stigma is attached to seeking professional counseling to solve problems.

F. Written reprimand

A written reprimand, issued by the chief of police/sheriff, cautions an employee about poor behavior, sets forth the corrected or modified behavior mandated by the department, and specifies the penalty in case of recurrent poor behavior. A written reprimand becomes a permanent part of the employee's personnel record.

- 1. An employee may appeal a written reprimand in writing within ten days of its receipt. If the chief of police sustains the reprimand, the employee may appeal the reprimand to the town manager who shall be the final arbiter.
[Note: Although most orders in this manual use the titles "sheriff" and

"chief of police" interchangeably, a grievance against a sheriff usually cannot be appealed beyond the sheriff.]

G. Demotion or suspension without pay

If the situation warrants, the chief of police, in consultation with the town manager, may demote an employee or suspend without pay, measures normally considered equivalent.

1. Suspensions without pay will normally apply to a period of up to 15 days, as determined by the chief of police and town manager.
2. If an employee becomes a candidate for suspension a second time within one year after the first suspension, the employee shall be dismissed.
3. Suspensions resulting from criminal investigations may be prolonged beyond 15 days pending court action.
 - a. In no case shall an employee convicted of a felony continue to work for the department.
 - b. If an employee is acquitted of criminal charges, the employee may yet be disciplined at the discretion of the chief of police/sheriff or reinstated with full or partial back pay.
4. Any member suspended for a period five days or longer shall return all department-owned property. On any suspension, the officer must return to department custody his or her badge, identification card, and issued firearm.
5. During a suspension, the employee shall not undertake any official duties.
6. Demotion shall be to the next lowest rank. Demotion shall only apply to the sergeant or senior officer.
7. An employee may protest a suspension within five days of notice. An employee may appeal a suspension through the chief of police to the town manager and the police committee, whose decision is final. The police committee shall conduct a hearing in accordance with *Virginia Code § 2.1-116.5-.7*. ***[Note: In adapting this order, carefully distinguish between procedures applicable to sheriffs and those applicable to police. The appeals process with a police committee applies to a police department. In most cases, the sheriff is the final arbiter of an appealed suspension.]***
8. The town manager may reinstate a suspended employee at any time with back pay, benefits, and original rank or position.

H. Dismissal

Dismissals are made in cases of extreme misfeasance, malfeasance, or nonfeasance of duty. A complete record of the circumstances of the misbehavior shall be made by all persons having knowledge of the misbehavior. See RR 1-20 for guidance on dismissals.

1. Employees may protest or appeal a dismissal within fifteen days of receipt of notice, and may appeal in accordance with the procedure outlined under paragraph G.7 above, in accordance with § 2.1-116.5.
2. Whenever dismissal or suspension is planned, the department shall provide notice to the employee in accordance with 2.1-116.4.

I. Reporting arrests

Any employee arrested for, charged with, or convicted of **any** crime, or required to appear as a defendant in any criminal or civil proceedings, must so inform the chief of police/sheriff in writing as soon as possible. Employees do not have to report parking tickets or minor traffic offenses. Employees must report summonses or arrests for reckless driving, DUI, second or more violations for speeding, or any other traffic offenses with penalties over \$25.00. Failure to notify the department of the foregoing shall be cause for punishment.

V. **INFRACTIONS AND PUNISHMENTS**

- A. Except for gross breaches of discipline or moral turpitude (see RR 1-2), supervisors shall begin employee discipline with the least punitive measures. If these do not work, then increasingly more severe measures may be required. While this process may take some time, it is important that each employee be dealt with justly and in a manner which clearly indicates that positive, constructive measures to change behavior or performance preceded the imposition of more negative sanctions.
- B. Employees are reminded that all appeals are governed by law, as specified under the Law Enforcement Officers' Procedural Guarantees (§§ 2.1-116.1-.9).
- C. Unacceptable conduct is divided into three categories according to severity of misbehavior.
 1. Category I.

Examples:

 - a. Excessive absences, tardiness.

- b. Abuse of duty time (too much time away from established duties; too much time for personal business).
- c. Abusive or obscene language.
- d. Inadequate or unsatisfactory job performance.
- e. Disruptive behavior.

Category I offenses are of minor severity yet require correction in the interest of maintaining a productive and well-managed department.

Category I offenses normally result, in the first offense, in informal measures such as counseling, or perhaps oral reprimand/formal counseling. Three Category I offenses in one year results in a written reprimand or suspension of up to five days. A fourth instance in one year shall provide grounds for longer suspension or dismissal.

2. Category II.

Examples:

- a. Failure to follow supervisor's instructions, perform assigned work, or otherwise comply with policy.
- b. Violating safety rules without a threat to life.
- c. Unauthorized time away from work assignments without permission during duty hours.
- d. Failure to report to work without proper notice to a supervisor.
- e. Unauthorized use or misuse of department property.
- f. Refusal to work overtime based on a reasonable request, or repeated refusals to work overtime.

Category II offenses include more severe acts and misbehavior. Category II offenses normally result, in the first instance, in issuance of a written reprimand. A subsequent infraction within two years shall result in suspension of up to ten days or demotion or dismissal.

3. Category III.

Examples:

- a. Absence in excess of three days without notice to a superior.
- b. Use of alcohol or unlawful possession or use of a controlled substance while on duty.
- c. Reporting to work under the influence or when ability is impaired by alcohol or the unlawful use of controlled substances.
- d. Insubordination or serious breach of discipline.
- e. Falsification of any reports such as, but not limited to, vouchers, official reports, time records, leave records, or knowingly making any false official statement.
- f. Willfully or negligently damaging or destroying town property.
- g. Theft or unauthorized removal of departmental records or town or employee property.
- h. Gambling on town/county property.
- i. Acts of physical violence or fighting (except official police actions).
- j. Violating safety rules where there is a threat to life.
- k. Sleeping on duty.
- l. Participating in any kind of work slowdown or sitdown or any other concerted interference with town/county operations.
- m. Unauthorized possession or use of firearms, dangerous weapons, or explosives.
- n. Threatening or coercing employees or supervisors.
- o. Criminal convictions for acts of conduct occurring on or off the job which are plainly related to job performance and consequently to continue the employee in the assigned position would constitute negligence regarding the agency's duties to the public.
- p. Failure to take physical or mental examinations as required. The chief of police/sheriff may require mental or physical examinations of a member or employee by a designated psychiatrist, psychologist, or physician when, in the chief's/sheriff's estimation, it is in the best interest of the member, employee, or the department.

- q. Using public office for private gain.
- r. Engaging in criminal conduct on or off the job.
- s. Engaging in dishonest or immoral conduct that undermines the effectiveness of the agency's activities or employee performance, whether on or off the job.
- t. Willful disobedience of a lawful command of a supervisor.
- u. Disclosure of confidential information to any person except those who may be entitled to such information.
- v. Taking any action which will impair the efficiency or reputation of the department, its members, or employees.
- w. Acceptance of any bribe, gift, token, money, or other things of value intended as an inducement to perform or refrain from performing any official act, or any action of extortion or other means of obtaining money or anything of value through his position.
- x. Manifesting cowardice, feigning illness, or otherwise attempting to shirk official duty.
- y. Involvement in any compromise between persons accused of crime and the person or persons who may have suffered from criminal acts with the purpose of allowing the accused to escape punishment.
- z. Failure to answer questions specifically directed and related to official duties or job fitness (unless criminal prosecution is contemplated; see RR 1-9.)
- aa. The use of unnecessary force during an arrest/custody procedure.
- bb. Deviation from established procedures in the disposition of summons or arrest cases.

Category III offenses include acts of such severity as to merit suspension or dismissal at a single occurrence. Category III offenses may be punished by suspension for 15 days (or longer, with approval of the town manager) or dismissal.

D. Probationary employees

Probationary employees shall be dismissed, suspended, or otherwise disciplined according to the foregoing. The only difference is that a probationary employee has no right of appeal.

1. In the case of a dismissed probationary employee, the official record shall merely indicate that the person was dismissed during probationary employment.

E. Sexual harassment and other discrimination

Employees found to have engaged in discrimination on the basis of race, color, religion, national origin, political affiliation, handicap, age, or sex (including sexual harassment) may be counseled or disciplined with either a Category I, II, or III Offense, depending upon the specific facts and circumstances surrounding the incident.

1. Sexual harassment is defined in RR 1-8.

F. Discipline checklist

The following checklist from the *Management Kit* of the American Management Association should be used by supervisors to help analyze the employee misbehavior and offer correction.

1. Have I secured the necessary facts?
 - a. Did the employee have an opportunity to tell fully his or her side of the story?
 - b. Did I check with the employee's immediate supervisor?
 - c. Did I investigate all other sources of information?
 - d. Did I hold my interview privately in order to avoid embarrassing the interested employee or employees?
 - e. Did I exert every possible effort to verify the information?
 - f. Did I check the employee's personnel folder to look at his or her past record?
2. Have I considered all the facts in deciding upon the disciplinary measure?
 - a. Have I found out what has been done in similar cases in my department?

- b. Have I found out what has been done in similar cases in other departments?
 - c. Have I shown any discrimination toward an individual or group?
 - d. Have I let personalities affect my decision?
 - e. Does the measure fit the violation?
 - f. Will the measure prevent a recurrence?
 - g. Will the measure maintain morale?
 - h. Will the measure encourage the employee's initiative?
 - i. Will the measure create a desire on the part of the employee to do what is right?
 - j. Have I checked this decision with my immediate supervisor?
3. Have I administered the corrective measure in the proper manner?
- a. Did I consider whether it should be done individually or collectively?
 - b. Am I prepared to explain to the employee why the action is necessary?
 - (1) The effect of the violation on the department, fellow employees, and him- or herself.
 - (2) To help the employee improve efficiency and also that of the department.
 - c. Am I prepared to tell the employee how to prevent a similar offense in the future?
 - d. Am I prepared to deal with any resentment?
 - e. Have I filled out a personnel folder memo to be signed by the employee?
4. Have I made the necessary follow-up?
- a. Has the measure had the desired effect on the employee?
 - b. Have I done everything possible to overcome any resentment?

- c. Is the employee convinced that the action was for his or her best interest?
- d. Have I endeavored to compliment the employee on good work?
- e. Has the action had the desired effects on other employees in the department?